Supreme Court of the United States

October Term, 1935.

No. 313

THE FIRST NATIONAL BANK OF WAUKEGAN, as Trustee under Trust No. 316 et al., JOSEPH J. DEOBNICK and MARK J. DEOBNICK,

Petitioners,

vs.

THE DEPARTMENT OF PUBLIC WORKS AND BUILDINGS OF THE STATE OF ILLINOIS, etc.,

Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE APPELLATE COURT OF ILLINOIS, SECOND DISTRICT, AND NO. 313 SUPREME COURT OF ILLINOIS

AND

BRIEF IN SUPPORT THEREOF

[illegible]

[illegible]

[illegible]

IN THE

Supreme Court of the United States

OCTOBER TERM, 1965

NO. 1012

THE FIRST NATIONAL BANK OF WAUKEGAN as Trustee under Trust No. 616 et al., JOSEPH J. DROBNICK and MARK J. DROBNICK,

Petitioners,

vs.

THE DEPARTMENT OF PUBLIC WORKS AND BUILDINGS OF THE STATE OF ILLINOIS ETC.,

Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE APPELLATE COURT OF ILLINOIS, SECOND DISTRICT AND TO THE SUPREME COURT OF ILLINOIS.

BRIEF FOR RESPONDENT IN OPPOSITION

The respondent, Department of Public Works and Buildings of the State of Illinois, respectfully prays that a writ of certioari, to review the judgment of the Illinois Appellate Court, Second District, and the Order of the Supreme

Court of Illinois denying petitioner's petition for leave to appeal, be denied.

OPINIONS BELOW.

The opinion of the Illinois Appellate Court, Second District, is reported in full in 61 Ill. App. 2d, 78, and is appended to Appendix "A" in full in this opinion. A petition filed with the Illinois Supreme Court requesting leave to appeal was denied, without opinion, and is appended to the petition as Appendix "B". Both Appendix "A" and "B" correctly state the opinion of the Illinois Appellate Court, Second District, and the Order of the Illinois Supreme Court denying petition for leave to appeal.

JURISDICTION.

The jurisdictional requisites are not adequately set forth in the petition. The petitioner seeks to invoke jurisdiction under 28 USC 1257(3); 28 USC 1358; and 28 USC 1331.

Concerning 28 USC 1257(3), the validity of a treaty or statute of the United States is not drawn in question, nor is the validity of the State statute drawn in question, on the ground of its being repugnant to the Constitution, treaties or laws of the United States, nor is there any title, right, privilege or immunity that is specifically set up or claimed under the constitution, treaties or statutes of, or commission held or authority exercised under the United States, that can be appropriately claimed.

Concerning 28 USC 1358, this case is not a federal condemnation proceeding, nor was the condemnation of the subject real estate for the use of the United States or its Departments or agencies, and this section is not applicable to the jurisdictional requisites of this Court governing review in writ of certiorari.

Concerning 28 USC 1331, this section deals with the original jurisdiction of Federal District Courts and is not applicable to the jurisdictional requisites of this Court governing review on writ of certiorari from state court proceedings.

Further, petitioner's statement that the matter in controversy exceeds the jurisdictional amount under Section 1331 has no application herein and does not invoke jurisdiction of this Court.

Finally, no federal question of substance was raised in the State court, timely or properly, so as to give the Supreme Court of the United States jurisdiction on writ of certiorari, nor as provided by Rule 19 of the Rules of the Supreme Court of the United States.

QUESTION PRESENTED.

Will the Supreme Court of the United States take jurisdiction on a writ of certiorari and rule on the propriety of an instruction in a State court condemnation proceeding which has heretofore been passed upon by the reviewing courts of the State?

STATUTE AND REGULATION INVOLVED.

The petition fails to set forth any appropriate statute, regulation, constitutional provision, treaty or ordinance, and merely refers to the Fourteenth Amendment of the Federal Constitution in general terms.

STATEMENT OF THE CASE.

Petitioner's reference to the amount of the preliminary finding of just compensation is not material, insofar as Chapter 47, Section 2.2(d), Ill. Rev. Stats., 1965, provides:

> Such preliminary finding of just compensation, and any deposit made or security provided pursuant thereto, shall not be evidence in the further proceedings to ascertain finally the just compensation to be paid, and shall not be disclosed in any manner to a jury impaneled in such proceedings; and if appraisers have been appointed as herein authorized, their report shall not be evidence in such further proceedings, but the appraisers may be called as witnesses by the parties to the proceedings.

Further, Chapter 47, Section 2.5, Ill. Rev. Stats., 1965, provides:

> Neither the petitioner nor any party interested in the property, by taking any action authorized by Sections 2-1 to 2.4, inclusive, of this Act, shall be prejudiced in any way in contesting, in later stages of the proceeding, the amount to be finally ascertained to be just compensation.

Moreover, the law in Illinois holds that valuations made by appraisers in preliminary proceedings made for the purpose of insuring an adequate deposit for the protection of the property owner in connection with the immediate vesting of title cannot serve as a touchstone in measuring the adequacy of the verdict, nor as to provide a guaranteed minimum. (*Department of Public Works* v. *Christensen*, 25 Ill. 2d, 273, 276-277.)

Further, the subject highway improvement, is a state highway improvement notwithstanding that Illinois may be reimbursed by the federal government because this is a federal aid project. Petitioner's reference to federal funds, therefore, is not material herein.

REASONS FOR DENYING THE WRIT.

The jurisdictional requisites are not adequately set forth in the petition.

The issue in this case is the propriety of a State court instruction in a condemnation proceeding which has heretofore been passed upon by the reviewing courts of Illinois.

A claim that a State court condemnation proceeding has deprived an owner of property of just compensation and due process and that a constitutional right has been violated does not present a federal question where the State court had jurisdiction of the parties and subject matter and all questions presented have been raised in State courts and review had been accorded. (*Chance* v. *County Board of School Trustees of McHenry County, Illinois,* CA Ill. 1964, 332 Fed. 2d, 971.)

Nor does the fact that the State government may be reimbursed by the federal government for work done in connection with this State highway improvement have any application herein nor does it give rise to a federal question. Questions arising from the taking of property by condemnation for State purposes are matters for determination by State rather than federal courts and the contention that a land owner was deprived of his property without due processes of law is insufficient to invoke "federal question" jurisdiction of federal courts, even though the federal government is subsidizing the acquisition pro-

gram. (*Harrison-Halsted Community Group, Inc.* v. *Housing and Home Financing Agency*, C.A. Ill. 1962; 310 Fed. 2d, 99; Ceriorari denied, 83 S. Ct. 1297; 373 U. S. 914; 10 L. Ed. 2d, 414.)

Further, it is submitted that a federal question of substance is not presented by the petitioner and there has been no decision by a State court of a federal question of substance not heretofore determined by this court or decided in a way probably not in accord with applicable decisions of this Court, as set forth by Rule 19(a) of the Rules of the Supreme Court of the United States.

Further, as to the particular instruction, the argument advanced by petitioner is unreasonable and illogical. Petitioner argues that this instruction prevents the jury from compromising, since it instructs that in arriving at their verdict, it is not proper for the jury *simply* to average or compromise the testimony. The instruction simply states that the jury should not avenge or compromise the testimony of the witnesses on the question of land values and damage to the remainder. Further, the instruction proceeds in the following sentence to instruct the jury that they are not precluded from bringing in *any* verdict that is *within the range of the testimony.* Finally, the instruction is valid under Illinois law. (*I. I. & M. Ry. Co.* v. *Freeman*, 210 Ill. 270, 278.)

Petitioner fails to cite any decision of this Court or any other court which is in conflict with the decision sought to be reviewed. The matter of whether this particular instruction in a civil case is argumentative is hardly of sufficient importance to be reviewed by this Court.

CONCLUSION.

For the foregoing reasons it is respectfully submitted that this petition for writ of certiorari should be denied.

Respectfully submitted,

WILLIAM G. CLARK,
Attorney General of the State of Illinois,
Suite 900, 160 North La Salle Street,
Chicago, Illinois 60601 (FInancial 6-2000,
Attorney for Respondents.

HAROLD G. ANDREWS,
DONALD T. MORRISON,
Special Assistant Attorneys General,
Of Counsel.